

December 7, 2004

Gene Merriam, Commissioner
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4047

Re: In the Matter of the Appeal of the Trespass Citation Issued to
Matthew Benjamin Corne
Citation Nos. 37028
OAH Docket No. 4-2000-16232-2

Dear Commissioner Merriam:

On November 17, 2004, a prehearing conference was held by telephone on the trespass citation listed above. Conservation Officer Keith Backer, Matthew Corne, and Jerri Corne, Matthew's mother, participated in the conference. The prehearing conference was tape-recorded. During the conference, the parties agreed that the prehearing conference would serve as the evidentiary record and that my recommendation would be based on the facts as determined on that record.

The relevant facts are largely undisputed. Bob and Jerri Corne and their children, including Matthew, age 14, own a parcel of property near Tenstrike, Minnesota. Mike Moe owns an adjacent parcel of property. Over the years, there have been difficulties between the two families with regard to entering on each other's land. Mr. Moe has told the Corne family that they did not have permission to enter his property. The only exception to that is that Mr. Moe has indicated that he would give Corne family members permission to enter his property to retrieve a wounded deer if they asked for his permission before coming onto the property for that purpose. The Corne family members are aware that they are not allowed to be on Mr. Moe's property without his permission, and Mrs. Corne has told her children, including Matthew, not to go on that property.

During the early afternoon of October 15, 2004, Mike Moe was standing outside his home when he heard several shots and saw several of his cattle running from the direction where the sound of the shots was coming from. A beaver pond is located on that portion of property, and Mike Moe started walking toward that location. As Mr. Moe reached a deer stand that overlooked the beaver pond, he saw an ATV parked on the property line between his property and the Corne property. He also saw Matthew Corne carrying a shotgun and walking around the beaver pond on the Moe property. Matthew Corne admitted to being on the Moe property at that time. Mike Moe walked up to Matthew Corne and asked him what he was doing on the property. Matthew said that

he was chasing a wounded duck. Mr. Moe expressed his disbelief about Matthew's explanation; he then took the young man's shotgun, removed the keys from the ATV, and told Matthew to go home.

Mike Moe kept Matthew's shotgun and ATV keys in his possession and then called the Department's Enforcement Division. The call was referred to Conservation Officer Backer for investigation. Officer Backer proceeded to the Moe property and interviewed Mr. Moe and made a site inspection of the area where the ATV was parked. Officer Backer believes that the ATV was located on Mr. Moe's side of the property line, but the available evidence did not establish definitively whether the ATV was located on the Cornes' side of the property line, on the Moe side, or whether it straddled the property line. In any event, Mr. Moe gave Officer Backer the shotgun and ATV keys. Upon examining the shotgun, Officer Backer found it to be loaded with three rounds of steel shot. Meanwhile, the Corne family had reported the incident to the Beltrami County Sheriff's Office, complaining that Mr. Moe had trespassed on their property when he seized the ATV keys, and that he had illegally seized Matthew's shotgun. Thereafter, Deputy Sheriff Scott Worley joined Officer Backer at the Moe property. The two law enforcement officers and Mr. Moe then went to the Cornes' home, where the three of them met with Matthew Corne and his father and mother. During the discussion that followed, Matthew Corne again admitted to being on Mr. Moe's property to retrieve a wounded duck, but he also admitted that he did not ask for Mr. Moe's permission before entering the property.

In short, Matthew Corne does not dispute being on Mr. Moe's property for a recreational purpose without first obtaining Mr. Moe's permission, after having been specifically notified not to do so. What he and his mother consider to be unfair is that Mr. Moe was not also cited for seizing Matthew's shotgun and for trespassing on the Corne property when he removed the keys from the ATV. However, it is unnecessary for the Administrative Law Judge to determine on whose property the ATV was located and whether Mr. Moe trespassed onto the Corne property. Minnesota Statutes, section 97B.001, only allows the Department to issue citations for entering another's land "for outdoor recreational purposes." Matthew Corne was admittedly on Mr. Moe's land while engaging in hunting, which falls within the definition of "outdoor recreation" in subdivision 1a of the statute. On the other hand, if Mr. Moe did enter the Corne property without permission in order to remove the keys from the ATV, it was not for an outdoor recreation purpose, and the Commissioner therefore lacks legal authority to cite Mr. Moe for that. So, if Mr. Moe did, in fact, trespass on the Corne property and illegally confiscate Matthew's shotgun, the Cornes must seek recourse in Beltrami County District Court because the Commissioner may only exercise the law enforcement authority that the legislature has specifically granted to him.

Based on all the statements by Officer Backer, Mr. Moe, and Matthew Corne, I find that Matthew Corne committed the violation for which he was cited. Therefore, Civil Citation No. 37028 was properly issued and should be affirmed.

I am closing our file in this matter. The record is enclosed with the exception of the tape of the telephone conference. If you would like a copy of the tape, please contact our office in writing or by telephone at 612-341-7448.

The law requires the final decision in this matter to be made by the Commissioner or his designee. The law^[1] further requires that the Commissioner wait at least five days after receipt of this recommendation before making that final decision and allow Mr. Corne to submit comments to the Commissioner on this recommendation within that five-day period. The Commissioner must send a copy of his final decision to Mr. Corne. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.^[2]

Sincerely,

S/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge
612-341-7607

cc: Matthew Corne
Conservation Officer Keith Backer
Major William Spence, DNR Enforcement

^[1] Minn. Stat. § 116.072, subd. 6(e).

^[2] Minn. Stat. § 14.62, subd. 2a.